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CALIFORNIA FORENSIC MEDICAL GROUP, INC.;
TAYLOR FITHIAN, M.D.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Estate of JOSHUA CLAYPOLE,
deceased, by and through SILVIA
GUERSENZVAIG, as Administrator;
SILVIA GUERSENZVAIG.

Plaintiff,

V.

COUNTY OF SAN MATEO;
SHERIFF GREG MUNKS, in his
individual and official capacity;
COUNTY OF MONTEREY;
SHERIFF SCOTT MILLER, in his
individual and official capacity;
SERGEANT E. KAYE, in his
individual and official capacity; CITY OF
MONTEREY; MONTEREY POLICE
DEPARTMENT CHIEF PHILIP PENKO, in
his individual and official capacity; BRENT
HALL in his individual and official capacity
CALIFORNIA FORENSIC MEDICAL
GROUP; DR. TAYLOR FITHIAN, in his
individual and official capacity;
COMMUNITY HOSPITAL OF
MONTEREY PENINSULA; and DOES 1
through 30.

Defendants.

} Case No. 5:14-cv 02730 BLF

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}{ **DECLARATION OF PETER G.
BERTLING IN RESPONSE TO
PLAINTIFF'S MOTION FOR
SANCTIONS AND TO COMPEL
DISCOVERY**

} Date: December 15, 2015
}{ Time: 10:00 a.m.
}{ Ctrm: 5
}{ JUDGE: Hon. Paul Grewal

} Action Filed: June 12, 2014
}{ PTR Conf: March 31, 2016
}{ Trial Date: April 11, 2016
}{ Judge: Hon. Beth Labson
}{ Freeman
}{ Ctrm 3, Fourth Floor

DECLARATION OF PETER G. BERTLING

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1 I, Peter G. Bertling, declare:

2 1. I am an attorney licensed to practice in California and before this District Court.

3 I represent defendants California Forensic Medical Group, Inc. (CFMG) and Dr. Taylor
4 Fithian. I have personal knowledge of the facts stated herein, and if called as a witness,
5 I could and would competently testify thereto.

6 2. During this litigation I have tried in good faith to comply with every discovery
7 request propounded on behalf of Plaintiff, including those documents which Dr. Hayward
8 was requested to produce at his October 16, 2015 deposition. I personally prepared Dr.
9 Hayward for this deposition and reviewed the October 2, 2015 Notice of Deposition and
10 Request for Production of Documents with him. I learned that several of the requested
11 documents were not in his possession, custody or control because these documents were
12 reviewed exclusively at the Monterey County Jail and he did not make copies of this
13 documentation. In addition, several of the requested documents had already been produced
14 during discovery in this litigation – documents which Plaintiff specifically indicated in her
15 request for production did not need to be produced by Dr. Hayward.

16 3. I recently learned Dr. Hayward does have some notes which are responsive to
17 Plaintiff's Request for Production which will be produced no later than December 4, 2015.

18 Should Dr. Hayward positively identify any other materials in his possession that are
19 responsive to Plaintiff's Request for Production, those will also be provided to Plaintiff's
20 counsel by December 4, 2015. I believe the sum and substance of these notes are included
21 in Dr. Hayward's Rule 26 Report which Ms. Rifkin questioned him extensively about
22 during his deposition.

23 4. Ms. Rifkin has accused me of making a sexist remark because I stated her
24 conduct was "not becoming of a woman." In retrospect, the proper term for me to have
25 used in this context would have been "attorney." I apologize to Ms. Rifkin if I offended
26 her by referring to her as a "woman" instead of as an "attorney." This was not my intent,

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1 but the comment was made in the context of Ms. Rifkin literally yelling at my client and
 2 creating a hostile environment during the deposition.

3 5. Ms. Rikfin is requesting sanctions against me because my conduct allegedly
 4 required her to “spend unreasonable amounts of time negotiating and re-negotiating
 5 deposition dates for Dr. Fithian and whether CFMG would produce certain witnesses for
 6 deposition.” During this litigation, I have worked with Ms. Rifkin to schedule deposition
 7 dates that would accommodate the schedules of both the attorneys and witnesses involved.
 8 There was nothing improper about my conduct that would justify an award of sanctions.
 9 The process of arranging a deposition requires the cooperation of all involved and, with
 10 respect to the depositions of Dr. Fithian, Ms. Spano and Ms. Shene, I attempted to facilitate
 11 the scheduling of these depositions. In fact, I agreed to make Ms. Spano and Ms. Shene
 12 available for deposition without a subpoena. I then made numerous telephone calls to
 13 them in order to schedule their depositions. Each of these witnesses appeared at their
 14 depositions as agreed.

15 6. Ms. Rifkin alleges she “spent approximately 14.9 hours preparing for and taking
 16 Dr. Fithian’s second 30(b)(6) deposition on September 7, which was rendered necessary
 17 because of Mr. Bertling’s improper instructions not to answer.” However, on August 18,
 18 2015, this Court heard Plaintiff’s Motion to Compel regarding this issue and denied much
 19 of what Ms. Rifkin requested. In fact, the Minute Order from the August 18, 2015
 20 proceeding states in part:

21 Plaintiff’s Motion to Compel is granted in part. Documents to be
 22 produced in response to Request for Production Nos. 33 and 34 only
 23 to the extent that they relate to the facilities identified in the Exhibit
 24 Dr. Fithian was describing in his deposition at pages 162-165. The
 25 Court orders three additional hours of deposition from Dr. Fithian
 once production of documents complete, which can include questions
 about changes in policies and procedures at the Monterey County
 facilities and staff practices at the Monterey facility.

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1 7. Judge Grewal did not grant Ms. Rifkin the majority of the relief she was
2 requesting. I subsequently promptly complied with the Court's Order by producing the
3 required documents and making Dr. Fithian available for deposition.

4 I declare under penalty of perjury under the laws of the United States that the
5 foregoing is true and correct. Executed this 24th day of November 2015.

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7 By: /s/ Peter G. Bertling
8 Peter G. Bertling, Declarant
9 Attorneys for Defendants
10 CALIFORNIA FORENSIC
11 MEDICAL GROUP, INC. and
12 TAYLOR FITHIAN, M.D.

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14 I hereby attest that I have on file all holograph signatures for any signatures indicated
15 by a "conformed" signature within this e-filed document.
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